



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-A No.2642 of 2019 (O&M)

Date of decision: 12th August, 2024

Shekhar

... Applicant

Versus

Surinder Kumar

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Parvez Chugh, Advocate for the applicant.

MANJARI NEHRU KAUL, J.

1. The appellant/complainant (hereinafter referred to as, 'the complainant') is challenging the judgment dated 17.07.2019 passed by the learned trial Court, whereby the respondent/accused (hereinafter referred to as, 'the respondent') was acquitted of the charges framed against him in a criminal complaint under Section 138 of the Negotiable Instruments Act, 1881.

2. According to the allegations made in the complaint, the respondent had borrowed ₹4.00 lacs from the complainant and had agreed to repay the said amount. After repeated requests from the complainant, the respondent issued a cheque bearing No.732602 dated 26.06.2017 for ₹4.00 lacs, drawn on State Bank of India, Branch Guru Harsahai in favour of the complainant. However, when the cheque was presented by the complainant, it was returned with a return memo dated 25.09.2017, bearing the remarks '*funds insufficient*'. Following this, the



complainant served a legal notice dated 13.10.2017, demanding payment from the respondent, but to no avail.

3. The trial Court, after considering the evidence and other materials presented, acquitted the respondent, holding that the complainant had failed miserably to prove his case, as he had repeatedly absented himself from the process of cross-examination.

4. Learned counsel for the complainant has reiterated the allegations made in the complaint, asserting that the respondent had indeed borrowed ₹4.00 lacs from the complainant. Learned counsel has argued that the trial Court erred in its judgment by concluding that the complainant failed to prove that he had lent money to the respondent. It has been contended by the learned counsel that the trial Court acquitted the respondent vide order dated 17.07.2019 solely on the basis that the complainant did not appear for his cross-examination, despite the fact that his evidence had been recorded long ago.

5. The complainant's absence on multiple occasions was in fact due to unforeseen difficulties and circumstances. Learned counsel has further submitted that the trial Court ignored crucial evidence on record and did not adequately consider the case of the complainant. Moreover, the case of the respondent lacked cogent evidence, and the complainant had admitted his signatures on the cheque. Importantly, nothing contrary was mentioned by the respondent in his statement under



Section 313 of the Cr.P.C. Hence, the impugned judgment ought to be set aside.

6. I have heard learned counsel for the appellant and perused the relevant material on record.

7. It is settled law that the absence of the complainant during cross-examination can weaken the complainant's case. The Court may draw an adverse inference from such absence, leading to the acquittal of the accused due to the failure of the complainant to prove his case beyond a reasonable doubt. There can be no manner of doubt that thus, the presence of the complainant during cross-examination is of utmost importance.

8. It is undisputed that the complainant failed to appear in Court for his cross-examination on multiple occasions, despite being given several opportunities, thereby failing to prove his case. Consequently, as per the provisions of the Indian Evidence Act, his testimony was rightly not recorded and the trial Court did not err in ordering the closure of the complainant's evidence.

9. This Court, therefore, concurs with the findings of the trial Court that the complainant failed to establish his case against the respondent beyond reasonable doubt, particularly in view of the repeated absences of the complainant during trial on multiple dates.



10. Consequently, there is no illegality or perversity in the impugned order. The instant appeal as well as the application for condonation of delay stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

August 12, 2024
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No